

# Financial Services Regulation and Compliance - Cross Sectoral and Other October 2024

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20 November 2024

## Domestic

### Fitness & Probity Performance Report

On 17 October 2024, the Central Bank of Ireland (**CBI**) published its Fitness and Probity Performance Report (the **report**), which addresses the metrics for the CBI's assessment of pre-approval controlled functions (**PCFs**) applications during the first half of 2024. The report outlined that 96% of applications relating to existing authorised firms were approved in less than 90 days while 14% of the applications relating to new firm authorisations were approved within 90 days and in total 80% of the applications relating to existing authorised firms and new firm authorisations were approved within 90 days.

The report outlined that 975 applications relating to existing authorised firms were approved, with an average processing timeframe of 28 days and that 314 applications relating to new firm authorisations were approved, with an average processing timeframe of 131 days.

### CBI publishes guidance and FAQ regarding completion of the retail intermediary annual return (RIAR) FAQ

On 9 October 2024, the CBI published the fifth version of its guidance manual (the **manual**) and an FAQ document in relation to the RIAR. The manual sets out the necessary information for the completion of the RIAR while the FAQs sets out answers in relation to the RIAR including accessing and submitting the RIAR on the CBI Portal and the information that must be provided in the return.

RIARs must be submitted by firms on the CBI Portal six months after the firm's reporting date.

### CBI guidance for retail intermediaries on the requirement to hold professional indemnity insurance cover

On 9 October 2024, the CBI published updated guidance for retail intermediaries on the requirement to hold professional indemnity insurance (**PII**) cover (the **guidance**). The guidance provides that the minimum PII levels required to be held by insurance, reinsurance and ancillary intermediaries and investment intermediaries has been increased to €1,564,610 per claim and €2,315,610 aggregate cover

per annum. The minimum PII levels required to be held by mortgage credit intermediaries remains the same at €460,000 for each individual claim and €750,000 in aggregate per calendar year for all claims.

Failure to comply with regulatory requirements in relation to PII cover can lead to regulatory intervention including administrative sanction or involuntary revocation.

### **CBI Governor Gabriel Makhoulf, Deputy Governor Derville Rowland address the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach**

On 9 October 2024, Gabriel Makhoulf, Governor of the CBI, addressed the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach (the **Committee**).

Governor Makhoulf addressed the Committee on the economic outlook in the EU and consumer protection issues. He noted that in the euro area, projections indicated a consumption-led growth recovery although weaker than expected.

Addressing the Irish economy, Governor Makhoulf noted challenges presented by the growth in the Irish economy in relation to supply and infrastructure constraints. He referred to his letter to the Minister of Finance on 4 July which observed that higher levels of public investment would be required over the coming years to address deficits in housing and aid in the climate transition.

Governor Makhoulf noted in relation to the area of consumer protection, the enhanced approach being adopted by the CBI including the adoption of the Consumer Protection Code and the changes to internal procedures for oversight of consumer protection on an operational level in the CBI. He notes that these changes to consumer protection would come into effect in January 2025.

### **'Governing for the good - doing the right thing' - remarks by Deputy Governor Sharon Donnery**

On 3 October 2024, Sharon Donnery, Deputy Governor of the CBI delivered remarks at the Institute of Directors Chartered Director Programme Graduation. Deputy Governor Donnery addressed the importance of good governance and organisational culture and spoke to the question 'what does good look like?'.

Deputy Governor Donnery spoke about recognising good governance by way of outcomes, tone from the top, dealing with adverse situations and noted that good governance also requires that directors are inquisitive, strategic, forward looking and risk-based.

### **Regulating for better outcomes, remarks by Director Gerry Cross**

On 1 October 2024, Gerry Cross, Director of Financial Regulation of the CBI delivered remarks at the Compliance Institute Annual Conference. Director Cross noted the outcomes focused approach of the CBI and addressed the room on the topic of regulating for better outcomes. He noted the evolving approach of the CBI and presented it under the headings of resilience, protecting customers, individual accountability and how the CBI supervise.

Director Cross identified DORA as an example of the evolution of the financial governance framework in relation to resilience, noting that as a smart regulation, DORA could be used to deliver resilience in a way that is sophisticated, adaptive, proportionate and evolving. Director Cross referred to the Consumer

Protection Code as another smart regulation but in the area of protecting customers. He noted that by focusing on outcomes, firms would not just focus on the letter of the regulation leading to better results.

In relation to the IAF, Director Cross told the conference that the CBI had listened closely to concerns that the new framework would only function as an “enforcement” mechanism to be deployed by the CBI and that these concerns would be reflected in the CBI’s implementation of the framework. Director Cross also noted the reform internally in the CBI that would result in a change where directorates would be responsible for individual sectors. Director Cross commented that the new framework would allow the CBI to be more efficient in its supervision of financial entities.

## European

### **Commission delegated regulation with regard to the regulatory technical standards (RTS) on harmonisation of conditions enabling the conduct of the oversight activities**

On 24 October 2024, the Commission published the delegated regulation with regard to the RTS on harmonisation of conditions enabling the conduct of oversight activities. The delegated regulation addresses the designation of critical ICT third party providers under article 31 of the Digital Operational Resilience Act (**DORA**) and their supervision by the lead overseer. The contents of the delegated regulation include the information to be provided by critical ICT third-party service providers and the role of competent authorities in assessing the risks addressed in the recommendations of the lead overseer.

### **Commission delegated regulation and implementing regulation with regard to the notification of major ICT- related incidents under DORA**

On 23 October 2024, the Commission published the delegated regulation addressing the RTS specifying the content and time limits for the initial notification of, and intermediate and final report on, major ICT-related incidents, and the content of the voluntary notification for significant cyber threats under DORA.

The Commission also published an implementing regulation laying down the implementing technical standards (**ITS**) for the standard forms, templates, and procedures for financial entities to report a major ICT-related incident and to notify a significant cyber threat.

### **EBA issues decision on classification of ARTs and EMTs as significant**

On 22 October 2024 the European Banking Authority (**EBA**) published a decision concerning the procedure for classifying asset-referenced tokens (**ARTs**) and e-money tokens (**EMTs**) as significant under the Markets in Crypto Assets Regulation (**MiCAR**), the transfer of responsibilities regarding issuers of significant ARTs and EMTs from National Competent Authorities (**NCA**s) to the EBA and the reporting obligations of issuers of significant ARTs and EMTs.

The decision provides for a harmonised reporting calendar for NCA and sets out the relevant time periods for references and remittances. The decision also sets out the procedural arrangements for the EBA’s decisions on significance assessments and the transfer of supervisory responsibility from NCA to the EBA.

## **ESMA issues opinion on technical standards relating to CASP authorisation and notifications by entities intending to provide crypto-asset services**

On 16 October 2024, the European Securities and Markets Authority (**ESMA**) published an opinion responding to the European Commission's (the **Commission's**) proposed amendments to the RTS on the information to be included in an application for authorisation as a crypto-asset service provider (**CASP**) and the RTS on the information to be included in a notification by certain financial entities intending to provide crypto-asset services under MiCAR (the **opinion**).

The opinion, recommends that the Commission considers amendments to the text of the MiCAR to:

1. require applicant CASPs and notifying entities to provide the results of an external cybersecurity audit
2. to expand the checks required when assessing the good repute of members of the management bodies of CASPs

The Commission can choose to accept or reject the suggested amendments when adopting the two RTS. The European Parliament and the Council then have a period of three month when they can choose to object to an RTS adopted by the Commission.

## **ESAs respond to the European Commission's rejection of the technical standards on registers of information under DORA**

On 15 October 2024, the European Supervisory Authorities (**ESAs**) published an opinion on the European Commission's (the **Commission's**) rejection of the draft implementing technical standards (**ITS**) on the registers of information under DORA (the **opinion**). The Commission notified the ESAs of its rejection of the ITS on 3 September 2024, citing the mandatory use of the legal entity identifier (**LEI**) to identify ICT third-party service providers (**ICT TPSPs**) as the grounds for rejection and proposed amendments to the ITS to give financial entities the choice of identifying their ICT TPSPs by using their LEI or their European unique identifier (**EUID**).

The ESAs' opinion argued that the use of the EUID added unnecessary complexity and would create additional implementation and maintenance efforts and an additional reporting burden for financial entities.

The ESAs' opinion also pointed to potential negative impacts to data quality and delays to ICT TPSPs being designated as critical ICT TPSPs by the ESAs. The opinion suggests further changes that should be made to the ITS to support the Commission's inclusion of the EUID if required and also suggests changes to the ITS based on feedback from financial entities based on the DORA dry run exercise.

## **EBA publishes guidelines on redemption plans under the MiCAR**

The EBA published its final guidelines on the orderly redemption of token holders in case of crisis of the issuer (the **guidelines**) as provided for under MiCAR on 9 October 2024. The guidelines apply to issuers ARTs and EMTs and address issuers and NCAs. The guidelines outline the content of redemption plans to be developed by issuers, the frequency of review of redemption plans and the trigger for their implementation.

The guidelines will now be published on the EBA's website and will apply from two months following publication.

### **ESAs to focus on digital resilience and sustainability disclosures in 2025**

The Joint Committee of the ESAs published its work programme for 2025 on 7 October 2024. The work programme outlines that in 2025 the ESAs will undertake joint work to oversee critical ICT third-party providers and implement the ICT-related incident coordination framework as provided by DORA, provide further guidance on sustainability disclosures, monitor financial conglomerates, promote coordination and cooperation among national innovation facilitators and address other cross-sectoral matters such as retail financial services, investment products and securitisation.

### **Remarks by Paschal Donohoe following the Eurogroup meeting of 7 October 2024**

On 7 October 2024, Paschal Donoghue issued remarks summarising the contents of the Eurogroup meeting held on the same day. Mr Donoghue noted that the meeting began by addressing the digital euro and that the parties acknowledge that public outreach remained key for the potential success of the digital euro's rollout. Mr Donoghue also shared that a Eurogroup statement on competitiveness was being drafted with input from ministers. Other topics discussed at the meeting included the work of the European Investment Bank, the Euro summit and preparation for the IMF and World Bank Annual meetings and a meeting of the G7 finance ministers.

### **ESAs appoint Director to lead their DORA joint oversight**

On 1 October 2024, the ESAs announced that Marc Andries had been appointed to lead their oversight activities. Mr Andries took up his role on 1 October 2024 as head of the new joint Directorate in charge of oversight activities for critical third-party providers established by DORA.

For more information on these topics please contact any member of A&L Goodbody's [Financial Regulation Advisory](#) team.

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